HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.396 of 2006

Dated:23.02.2007

Between:

M/s. Plasco Battery Industries.

…Petitioner.

and

The Commissioner & Registrar of Cooperative Town bank, and another.

…Respondents

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ORDER:

The petitioner borrowed a sum of Rs.9,00,000/- from the respondent-Bank in the year 2001. Interest at 16.2%, per annum, and penal interest of 3%, on overdue amount, are leviable. Since the petitioner failed to pay the amount, the respondents issued the notice, dated 27.11.2004, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"). This was followed by assumption of possession of the property, offered as security through notice, dated 28.11.2005. Subsequently, the respondents proposed to put the property to sale. At that stage, the petitioner approached this Court by filing this writ petition.

It is contended that the respondent did not follow the provisions of the Act, particularly sub-section (3A) of Section 13 of the Act. It is stated that though the petitioner made a detailed representation, no

order was passed in response thereto.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

The petitioner does not dispute the factum of its borrowing an amount of Rs.9,00,000/-, from the respondent-bank, by offering certain immovable property, as security, by depositing title deeds. It is also not disputed that the amount remained unpaid. Therefore, no exception can be taken to the action of the respondents in enforcing the provisions of the Act.

The respondents issued the notice under Section 13(2) of the Act on 27.11.2004. Though it is stated that the petitioner submitted a representation in response thereto, there is nothing on record to substantiate the same. The necessity for the respondent to pass an order under Section 13(3A) of the Act would arise, if only a representation was made.

Be that as it may, while admitting the writ petition, this Court passed an interim order on 05.01.2006, to the effect that in case the petitioner deposits a sum of Rs.4,50,000/-, within three weeks, there shall be stay of further steps. A default clause was added. The petitioner did not pay the amount. The default operated and the stay stood vacated. Therefore, the respondent proceeded to put the property to sale. Under these circumstances, this Court is not inclined to grant any relief to the petitioner.

Learned counsel for the petitioner made an appeal to the Court that the petitioner be granted reasonable time to clear the debt and the sale of the property be deferred till then. Strictly speaking, the petitioner does not deserve any indulgence, particularly in view of its failure to comply with the condition imposed in the interim order. However, as a last chance, it is granted six weeks time to pay the entire amount, due to the respondents.

Hence, the Writ Petition is disposed of, directing that the proposed sale of the property may go on, but the confirmation of sale shall be deferred by six weeks from today. In case the petitioner clears the entire liability, due to the respondents, by that time, the sale shall stand set aside. On the other hand, if the petitioner fails to deposit the amount, it shall be open to the respondents to confirm the sale and take other steps. There shall be no order as to costs.

Dt.23.02.2007 **L.NARASIMHA REDDY, J**

GJ